

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GARY DAVIS,

Plaintiff,

v.

JUDGE DONNA JO MCDANIEL,
ATTORNEY GENERAL MICHELLE
HENRY, and SCI FOREST
SUPERINTENDENT STEVE IRWIN,

Defendants.

Civil Action No. 23-1366

MEMORANDUM ORDER

This matter comes before the Court after Plaintiff declined to file objections to the Report and Recommendation (“R&R”) (Docket Nos. 16, 17)¹ entered by Chief United States Magistrate Judge Richard A. Lanzillo on November 30, 2023. The R&R recommends that this action be dismissed as legally frivolous and/or for failure to state a claim pursuant to 28 U.S.C. § 1915(e). (Docket No. 17 at 1, 6). Service of the R&R was made on Plaintiff via U.S. Mail. The R&R informed the parties that objections to same were due by December 14, 2023, for registered ECF users, and by December 18, 2023, for unregistered ECF users. (*Id.* at 6 and docket entry). Thereafter, no party filed any objections to the R&R.

The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district judge must conduct a *de novo* review of any part of the R&R that has been properly objected to. *See* Fed. R. Civ. P. 72(b)(2), (3); 28 U.S.C. § 636(b)(1). Here, however, because the parties did not file any objections to the R&R – which explicitly stated that failure to file timely objections

¹ After the R&R was filed at Docket No. 16, the case was reassigned to this judicial officer, and a corrective entry was made at Docket No. 17 (to which the Court refers herein) to correct the name of the district judge identified in the R&R’s caption.

“may constitute a waiver of appellate rights” – we review the magistrate judge’s decision for plain error. (Docket No. 17 at 6-7). *See Brightwell v. Lehman*, 637 F.3d 187, 193 (3d Cir. 2011) (citing *Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007)); *see also* Fed. R. Civ. P. 72(b), Advisory Committee Notes, 1983 Addition (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citing *Campbell v. U.S. Dist. Ct.*, 501 F.2d 196, 206 (9th Cir.), *cert. denied*, 419 U.S. 879 (1974))).

In this case, upon careful review of the R&R and the entire record, the Court, finding no plain error on the face of the record, will accept Judge Lanzillo’s recommendation. As such, the Court will adopt the R&R as the Opinion of the Court and will dismiss the claims in the Amended Complaint (Docket No. 14) pursuant to 28 U.S.C. § 1915(e). In so ruling, the Court agrees with Judge Lanzillo’s recommendation that, since Plaintiff’s claims appear to challenge his conviction and subsequent detention, and since Plaintiff acknowledges that his conviction has not been invalidated or reversed, Plaintiff’s claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). (Docket No. 17 at 3-4). Accordingly, Plaintiff’s claims should be dismissed for failure to state a claim on which relief may be granted, although the claims should be dismissed without prejudice to Plaintiff’s ability to file a new complaint challenging such conduct should he be able to demonstrate a favorable termination of his criminal conviction. (*Id.* at 4, 6).

Additionally, the Court agrees with Judge Lanzillo’s conclusion that Plaintiff’s claims here are similar to those he raised in another case – for which Plaintiff was also granted *in forma pauperis* status – and such claims are therefore frivolous.² (Docket No. 17 at 3). The Court also agrees with Judge Lanzillo that the Amended Complaint includes no allegations of personal involvement by Defendants Henry and Irwin. (*Id.* at 5). Furthermore, the Court agrees with Judge

² The Court notes that Plaintiff submitted a notice of voluntary dismissal in his other case, *Davis v. Attorney General Michelle Henry et al.*, No. 1:23-cv-200 (W.D. Pa.), just before the R&R was issued in this case.

Lanzillo that Defendant Judge McDaniel is entitled to immunity in this matter since Plaintiff's claims against her appear to be entirely related to judicial rulings that she made while presiding over Plaintiff's criminal proceedings. (*Id.* at 5-6).

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 17th day of June, 2024,

IT IS HEREBY ORDERED that the Report and Recommendation ("R&R") (Docket No. 17) is ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Amended Complaint is dismissed, pursuant to 28 U.S.C. § 1915(e), because it fails to state a claim on which relief may be granted, is legally frivolous, and seeks monetary relief against a defendant who is immune from such relief. Plaintiff's claims are dismissed without prejudice to his ability to file a new complaint challenging such conduct should he be able to demonstrate a favorable termination of his criminal conviction, as more fully set forth in the R&R.

/s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: The Honorable Richard A. Lanzillo
 Gary Davis (via U.S. Mail)